

Attachment B

Letter to OMB from
Domestic Petroleum Council et al.,
dated March 25, 1997.

DOMESTIC PETROLEUM COUNCIL

**INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA**

**INDEPENDENT PETROLEUM
ASSOCIATION OF
MOUNTAIN STATES**

**MID-CONTINENT OIL AND GAS
ASSOCIATION**

**ROCKY MOUNTAIN OIL
AND GAS ASSOCIATION**

March 25, 1997

Via Hand Delivery

**Office of Management and Budget
Information and Regulatory Affairs
725 17th Street, N.W.
Washington, D.C. 20503**

**Attn: Mr. David Rostker
Desk Officer for the Department of the Interior**

**Re: Notice of Proposed Rulemaking on Establishing Oil Value for
Royalty Due on Federal Leases and on Sale of Federal Royalty
Oil (62 F.R. 3742) published January 24, 1997**

Dear Sir:

This letter is written in response to the Department of Interior, Minerals Management Service's Notice of Proposed Rulemaking (NOPR) dated January 24, 1997 on Establishing Oil Value for Royalty Due on Federal Leases and on Sale of Federal Royalty Oil (62 F.R. 3742). Below stated are the pertinent statutory, regulatory and Executive Order authorities which govern this response. Obtainable MMS statements regarding these authorities are included for your convenience.

Enclosed is a preliminary analysis of the MMS proposal. Additional comments from the undersigned associations and/or their member companies will be filed with the MMS (copied to you) by the close of the public comment period.

I. PAPERWORK REDUCTION ACT

A. The MMS NOPR (62 Fed. Reg. at 3750) provides:

Paperwork Reduction Act

This proposed rule contains a collection of information which has been submitted to the Office of Management and Budget (OMB) for review and approval under section 3507(d) of the Paperwork Reduction Act of 1995. As part of our continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on any aspect of the reporting burden. . . .

OMB may make a decision to approve or disapprove this collection of information after 30 days from receipt of our request. Therefore, your comments are best assured of being considered by OMB if OMB receives them within that time period. However, MMS will consider all comments received during the comment period for this notice of proposed rulemaking.

B. The MMS Supporting Statement on the Paperwork Reduction Act submitted to OMB provides in part:

12. MMS estimates the annual reporting burden to be approximately 32,000 hours. There are approximately 2,000 royalty payors. The MMS subject matter experts estimate that on average, these payors would have about 64 exchange agreements and sales contracts from which data would need to be extracted. This annual filing as required by 30 CFR 206.105(d)(3) could require about one-quarter hour per report to extract the data from individual exchange agreements and sales contracts. This equals 16 hours per payor. Only a minimal recordkeeping burden would be imposed by this collection of information. Based on \$25 per hour, the annual industry cost is estimated to be \$800,000.

13. MMS estimates minimal additional expense incurred by respondents or recordkeepers resulting from the collection of information. The information requested is information that the payors will already keep on file for tax and personal accounting purposes. We do not anticipate any additional capital or start-up costs will be needed to provide the requested information. Furthermore, the total operational and service costs of providing the information should also be minimal because this information should already be maintained. Additionally, MMS anticipates a minimal amount of new equipment and supplies will be needed by the payors.

See Attachment B for a more complete text of the MMS Supporting Statement.

- C. The Paperwork Reduction Act (44 U.S.C. 3501 et seq.) provides in part:

§ 3507(d)(1)(A)& (B) For information collections contained in a proposed rule, the agency must forward the collection to the OMB Director, prior to or no later than the publication date of the proposal in the Federal Register. In addition, the agency must forward any additional information requested by the OMB, necessary to make the determination. The OMB Director must make a decision within 60 days after the notice is published. The director file public comments with the decision pursuant to standards set forth in § 3508.

§ 3507(d)(4) The OMB Director can disapprove the information collection even at the final rule stage. (i.e. when the final rule is published). In particular, if the Director feels that the agency has not complied or responded effectively to comments made.

- D. The regulations promulgated under the Paperwork Reduction Act (5 CFR part 1320 et seq.) provide in part:

§ 1320.5(d)(1) To obtain OMB approval of a collection of information, an agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection of information:

(i) Is the least burdensome necessary for the proper performance of the agency's functions to comply with legal requirements and achieve program objectives;

(ii) Is not duplicative of information otherwise accessible to the agency; and

(iii) has practical utility. The agency shall also seek to minimize the cost to itself of collecting, processing, and using the information, but shall not do so by means of shifting disproportionate costs or burdens onto the public.

§ 1320.8 Agency collection of information responsibilities.

The office established under § 1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g.,

permitting electronic submission of responses;

(6) A test of the collection of information through a pilot program, if appropriate; and

(7) A plan for the efficient and effective management and use of the information to be collected, including necessary resources.

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(e) Is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

See Attachment C for a more complete statement of the Paperwork Reduction Act regulations.

II. EXECUTIVE ORDER 12866

A. The MMS NOPR (62 fed reg at 3750) provides:

Executive Order 12866

The Office of Management and Budget has determined this rule is a significant rule under this Executive Order 12866 Section 3(f)(4). Which states: 'Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.' The Department's analysis of these proposed revisions to the oil valuation regulations indicate these changes will not have a significant economic effect, as defined by Section 3(f)(4) of this Executive Order.

B Executive Order 12866 provides in part:

Section 1, Statement of Regulatory Philosophy and Principles. (a) The Regulatory Philosophy. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

See Attachment D for a more complete text of Executive Order 12866.

As stated above, the enclosed Report is a preliminary analysis of the issues raised by the MMS proposal, including an analysis of the Paperwork Reduction

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Act and Executive Order 12866. Based upon the Report and MMS' Supporting Statement as it relates to compliance with the applicable statutory and regulatory authorities, we ask that OMB not approve the information collection requested by MMS. Among other things, it appears that MMS has not satisfied the requirement of 5 C.F.R. § 1320 that the "agency shall demonstrate that it has taken every reasonable step to ensure that the proposed collection...is the least burdensome...and has practical utility."

Further, as the Report illustrates, the current public comment deadline of April 28, 1997 does not permit sufficient time for a careful and detailed analysis of the altogether new and very different methodology proposed by MMS for valuing oil for royalty purposes. Consequently, on February 28, 1997, the undersigned associations requested that MMS enlarge its public comment period. Regrettably, MMS denied the request. We seek your support in pursuing a more reasonable comment period in which a proper and thorough analysis of the proposal can occur.

Respectfully submitted,

DOMESTIC PETROLEUM COUNCIL

**INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA**

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cc: Cynthia Quarterman, Director
Minerals Management Service
1849 "C" Street, N.W.
Washington, D.C. 20240-0001

Minerals Management Service
Royalty Management Program
Rules and Procedures Staff
P.O. Box 25165, MS 3101
Denver, CO 80225-0165
Attn: David Guzy

ATTACHMENT A SIGNATORY ASSOCIATIONS

DOMESTIC PETROLEUM COUNCIL

The Domestic Petroleum Council is a national trade association representing the nation's largest independent oil and gas producers. Collectively, its seventeen member companies produce a significant portion of the oil and gas produced throughout the U.S. from Federal lands.

INDEPENDENT PETROLEUM ASSOCIATION OF AMERICA

The Independent Petroleum Association of America (IPAA) is a national trade association representing over 5,000 independents exploring for and producing oil and natural gas in all thirty-three producing states. Independents differ from other segments of the industry as their sole profit source is from sale of oil and natural gas at the wellhead. Independents are very active on Federal lands and account for the nearly 65% of the natural gas and over 40% of the crude oil in the lower forty-eight.

INDEPENDENT PETROLEUM ASSOCIATION OF MOUNTAIN STATES

The Independent Petroleum Association of Mountain States (IPAMS) is a non-partisan, non-profit trade association representing the interests of over 750 independent oil and natural gas producers, royalty owners, consultants, and service/supply companies operating in a ten-state Rocky Mountain area: New Mexico, Wyoming, Colorado, Utah, Montana, North Dakota, South Dakota, Nevada, Nebraska and Arizona. Independent producers are producers whose main source of revenue is at the wellhead and who do not have downstream refining and marketing.

MID-CONTINENT OIL AND GAS ASSOCIATION

Mid-Continent Oil & Gas Association, founded in October 1917, is a national trade association representing major and independent oil and gas companies. The Mid-Continent Oil & Gas Association has four divisions: Texas, Louisiana, Oklahoma, and Mississippi-Alabama. The Association's purpose is ". . . the promotion and protection of the oil and gas Industry." The scope of the Association's responsibility is both National/Regional and State/Local.

ROCKY MOUNTAIN OIL AND GAS ASSOCIATION

Rocky Mountain Oil and Gas Association (RMOGA) is a trade association with hundreds of members, large and small, who account for over 90% of the oil and gas exploration, development and transportation activities in the Rocky Mountain West.

ATTACHMENT B
MMS SUPPORTING STATEMENT
ON PAPERWORK REDUCTION ACT
SUBMITTED TO OMB

* * *

"Adjustments for location and/or quality against the index values would consist of up to three components:

- 1) A location differential between the index pricing point (for example, West Texas Intermediate at Cushing, Oklahoma) and the appropriate market center (for example, Light Louisiana Sweet at St. James, Louisiana, or Wyoming Sweet at Guernsey, Wyoming), calculated as the difference between the average monthly spot prices published in a widely accepted trade publication for the respective locations.*
- 2) A rate published by MMS representing location differentials between the market center and major aggregation points for oil from various sources, and*
- 3) The actual transportation costs from the aggregation point to the lease as determined under the existing allowance rules.*

MMS will collect information on proposed Form MMS-4415, Oil Location Differential Report (Attachment 2), in order to derive and publish the rate representing location differentials between the market center to the major aggregation points. Collection of this data will allow MMS to add certainty to valuation of oil produced from Federal lands for royalty calculation purposes and eliminate any direct reliance on posted prices.

2. MMS will collect the information on proposed Form MMS-4415, the Oil Location Differential Report. Part of the valuation of oil not sold under arm's-length contract relies on price indexes that lessees may adjust for locational differences between the index pricing point and the lease. Federal lessees and their affiliates would be required to give MMS specific information from their various oil exchange agreements and sales contracts. From this data, MMS would calculate and publish representative location differentials for lessees' use in reporting royalties in different areas. This process would introduce certainty into royalty reporting.

3. The proposed information collection requires each payor to manually fill out a form and mail it to the Denver office of MMS for automated processing. Since MMS proposes to collect the information annually, techniques for electronic transfer of information have not been examined. If MMS decides that the information should be gathered more frequently, steps will be taken to automate the data collection and reduce the burden on industry.

4. The information to be collected is unique and specific to the area of oil valuation. There is no other source of this information available nor is there any other government agency currently collecting similar information for other purposes that could serve our needs.

5. The information collection will impact approximately 2,000 payors. This includes small businesses and large corporations. Currently, there are no special provisions to minimize the burden for this information collection on small businesses.

6. The information requested from the companies provides a critical link to estimating the proper valuation of oil from Federal lands. A crucial piece of the valuation equation relies on adjusting the value at a given market center by the proper location adjustment. This adjustment reflects not only a locational difference but also a market adjustment. Those directly involved with the marketing and sale of oil are keenly aware of what these values should be. If the information is not collected, it may result in a loss of royalties for both Federal and State governments.

7. (See last bullet.) The information requested on the form is proprietary. This information will be exempt from disclosure by the Freedom of Information Act, 5 U.S.C. 552, or other Federal law. MMS will keep confidential, under applicable laws and regulations, any and all data submitted that is privileged, confidential, or otherwise exempt. All requests for information about determinations made under this part are to be submitted under the Freedom of Information Act regulation of the Department of the Interior, 43 CFR Part 2.

8. The specifics of the proposed rule were developed with the help of a team of professionals familiar with the oil land gas industry. Outside consultation with parties experienced with oil and gas sales and marketing helped to determine the specific information needed on the proposed form. Further, these parties felt that collection of this information annually would be sufficient. Bear in mind, the current information collection is under a proposed rule that specifically asks for comments relating to the new form. The responses will be summarized and addressed in the final rule.

* * *

11. There are no questions of a sensitive nature on the proposed form.

12. MMS estimates the annual reporting burden to be approximately 32,000 hours. There are approximately 2,000 royalty payors. The MMS subject matter experts estimate that on average, these payors would have about 64 exchange agreements and sales contracts from which data would need to be extracted. This annual filing as required by 30 CFR 206.105(d)(3) could require about one-quarter hour per report to extract the data from individual exchange agreements and sales contracts. This equals 16 hours per payor. Only a minimal recordkeeping burden would be imposed by this collection of information. Based on \$25 per hour, the annual industry cost is estimated to be \$800,000.

13. MMS estimates minimal additional expense incurred by respondents or recordkeepers resulting from the collection of information. The information requested is information that the payors will already keep on file for tax and personal accounting purposes. We do not anticipate any additional capital or start-up costs will be needed to provide the requested information. Furthermore, the total operational and service cost of providing the information should also be minimal because this information should already be maintained. Additionally, MMS anticipates a minimal amount of new equipment and supplies will be needed by the payors.

14. MMS estimates it will require a team of two GS-9 employees approximately 120 hours annually to collect, sort, and file the documents at a total annual cost of approximately \$3,500. A

team of four GS-12 analysts will need approximately 240 hours each to analyze and publish the data annually, resulting in a total annual cost of \$20,500. The total cost of collecting and analyzing the data is estimated to be approximately \$24,000.

** * **

16. For the lessee to determine the value of oil under Sec. 206.102(c)(2) and (c)(3) of this subpart, the lessee must adjust it for the reasonable location differentials reflecting value differences between the lease boundary and the index pricing point. Part of this adjustment is the location differential between market centers and the aggregation point. MMS will calculate and publish this component annually for use in royalty reporting. The MMS calculation will be based on information furnished by lessees or their affiliates on form MMS-4415, the Oil Location Differential Report. A team of analysts will derive representative values for leases to apply to all leases in a given area. All Federal lessees or their affiliates, as appropriate, must initially submit Form MMS-4415 within two months of the effective date of these regulations and by October 31 of each succeeding year. MMS will publish its calculated location differentials within four months after the effective date of these regulations and by December 31 of each succeeding year. These differentials will be published in the Federal Register. The lessee must use MMS' first published differentials for all royalty reporting months in the remainder of the calendar year in which they are published and throughout the next calendar year.

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**ATTACHMENT C
PAPERWORK REDUCTION ACT REGULATIONS**

§ 1320.8 Agency collection of information responsibilities.

The office established under § 1320.7 shall review each collection of information before submission to OMB for review under this part.

(a) This review shall include:

(1) An evaluation of the need for the collection of information, which shall include, in the case of an existing collection of information, an evaluation of the continued need for such collection;

(2) A functional description of the information to be collected;

(3) A plan for the collection of information;

(4) A specific, objectively supported estimate of burden, which shall include, in the case of an existing collection of information, an evaluation of the burden that has been imposed by such collection;

(5) An evaluation of whether (and if so, to what extent) the burden on respondents can be reduced by use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses;

(6) A test of the collection of information through a pilot program, if appropriate; and

(7) A plan for the efficient and effective management and use of the information to be collected, including necessary resources.

§ 1320.9 Agency certifications for proposed collections of information.

As part of the agency submission to OMB of a proposed collection of information, the agency (through the head of the agency, the Senior Official, or their designee) shall certify (and provide a record supporting such certification) that the proposed collection of information--

(a) Is necessary for the proper performance of the functions of the agency, including that the information to be collected will have practical utility;

(b) Is not unnecessarily duplicative of information otherwise reasonably accessible to the agency;

(c) Reduces to the extent practicable and appropriate the burden on persons who shall provide information to or for the agency, including with respect to small entities, as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)), the use of such techniques as:

(1) Establishing differing compliance or reporting requirements or timetables that take into account the resources available to those who are to respond;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements; or

(3) An exemption from coverage of the collection of information, or any part thereof;

(d) Is written using plain, coherent, and unambiguous terminology and is understandable to those who are to respond;

(e) Is to be implemented in ways consistent and compatible, to the maximum extent practicable, with the existing reporting and recordkeeping practices of those who are to respond;

(f) Indicates for each recordkeeping requirement the length of time persons are required to maintain the records specified;

(g) Informs potential respondents of the information called for under § 1320.8(b)(3);

(h) Has been developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to be collected, including the processing of the information in a manner which shall enhance, where appropriate, the utility of the information to agencies and the public;

(i) Uses effective and efficient statistical survey methodology appropriate to the purpose for which the information is to be collected; and

(j) To the maximum extent practicable, uses appropriate information technology to reduce burden and improve data quality, agency efficiency and responsiveness to the public.

ATTACHMENT D
EXECUTIVE ORDER 12866

The American people deserve a regulatory system that works for them, not against them: a regulatory system that protects and improves their health, safety, environment, and well-being and improves the performance of the economy without imposing unacceptable or unreasonable costs on society; regulatory policies that recognize that the private sector and private markets are the best engine for economic growth; regulatory approaches that respect the role of State, local, and tribal governments; and regulations that are effective, consistent, sensible, and understandable. We do not have such a regulatory system today.

Section 1, Statement of Regulatory Philosophy and Principles. (a) The Regulatory Philosophy. In deciding whether and how to regulate, agencies should assess all costs and benefits of available regulatory alternatives, including the alternative of not regulating. Costs and benefits shall be understood to include both quantifiable measures (to the fullest extent that these can be usefully estimated) and qualitative measures of costs and benefits that are difficult to quantify, but nevertheless essential to consider. Further, in choosing among alternative regulatory approaches, agencies should select those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity), unless a statute requires another regulatory approach.

(6) Each agency shall assess both the costs and the benefits of the intended regulation and, recognizing that some costs and benefits are difficult to quantify, propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs.

(11) Each agency shall tailor its regulations to impose the least burden on society, including individuals, businesses of differing sizes, and other entities (including small communities and governmental entities), consistent with obtaining the regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations.

(e) "Regulatory action" means any substantive action by an agency (normally published in the Federal Register) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking.

(f) "Significant regulatory action" means any regulatory action that is likely to result in a rule that may:

(1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition,

jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

(3) In addition to adhering to its own rules and procedures and to the requirements of the Administrative Procedures Act [sections 551 et seq., 701 et seq. of this title], the Regulatory Flexibility Act [this chapter], the Paperwork Reduction Act [section 3501 et seq. of Title 44, Public Printing and Documents], and other applicable law, each agency shall develop its regulatory actions in a timely fashion and adhere to the following procedures with respect to a regulatory action:

(B) For each matter identified as, or determined by the Administrator of OIRA to be, a significant regulatory action, the issuing agency shall provide to OIRA:

(i) The text of the draft regulatory action, together with a reasonably detailed description of the need for the regulatory action and an explanation of how the regulatory action will meet that need; and

(ii) An assessment of the potential costs and benefits of the regulatory action, including an explanation of the manner in which the regulatory action is consistent with a statutory mandate and, to the extent permitted by law, promotes the President's priorities and avoids undue interference with State, local, and tribal governments in the exercise of their governmental functions.

(C) For those matters identified as, or determined by the Administrator of OIRA to be, a significant regulatory action within the scope of section 3(f)(1), the agency shall also provide to OIRA the following additional information developed as part of the agency's decision-making process (unless prohibited by law).

(i) An assessment, including the underlying analysis, of benefits anticipated from the regulatory action (such as, but not limited to, the promotion of the efficient functioning of the economy and private markets, the enhancement of health and safety, the protection of the natural environment, and the elimination or reduction of discrimination or bias) together with, to the extent feasible, a quantification of those benefits;

(ii) An assessment, including the underlying analysis, of costs anticipated from the regulatory action (such as, but not limited to, the direct cost both to the government in administering the regulation and to businesses and others in complying with the regulation, and any adverse effects on the efficient functioning of the economy, private markets (including productivity, employment, and competitiveness), health, safety, and the natural environment), together with, to the extent feasible, a quantification of those costs; and

(iii) An assessment, including the underlying analysis, of costs and benefits of potentially effective and reasonably feasible alternatives to the planned regulation,

identified by the agencies or the public (including improving the current regulation and reasonably viable nonregulatory actions), and an explanation why the planned regulatory action is preferable to the identified potential alternatives.

(E) After the regulatory action has been published in the Federal Register or otherwise issued to the public, the agency shall:

(i) Make available to the public the information set forth in subsections (a)(3)(B) and (C);

(ii) Identify for the public, in a complete, clear, and simple manner, the substantive changes between the draft submitted to OIRA for review and the action subsequently announced; and

(iii) Identify for the public those changes in the regulatory action that were made at the suggestion or recommendation of OIRA.

(F) All information provided to the public by the agency shall be in plain, understandable language.